IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 747 of 2005

Sunil Kumar Gupta
S/o Late Sri Vigyan Prakash
R/o G-37, Race Course, Dehradun.

Petitioner

Versus

1 State of Uttaranchal
2 Shri G.S. Sethi c/o M/s Sethi
Paint Industries X-XXXI, 1135/3,
Friends colony,
Opposite BBMB Power House,
Chandigarh Road, Ludhiana

Opposite parties

Hon'ble B.C. Kandpal,J.

This petition under Section 482 Cr.P.C. has been filed by the applicant Sunil Kumar Gupta for quashing the orders dated 30.7.2005 as well as order dated 28.10.2003 passed by Addl. District and Sessions Judge/ FTC IV Dehradun and Special Judicial Magistrate, IInd, Dehradun, respectively in criminal case No. 1055 of 2003 MS Gupta Line and Limestone Co. Vs G S Sethi.

Brief facts of the case giving rise to this petition are that the petitioner filed a complaint under Section 138 of Negotiable Instruments Act against respondent No. 2 and on this complaint the trial court took cognizance. Thereafter the trial court convicted respondent No. 2 for the offence under Section 138 Negotiable instruments Act.

The learned trial court vide order dated 28.10.2003 directed respondent No. 2 deposite an amount of Rs. 20,000 (twenty thousand) as compensation. The trial court further directed that out of the deposited amount, an amount of Rs. 15,000(fifteen thousand) shall be paid to the complainant as compensation.

The revision was preferred by the complainant against the aforesasid judgement passed by the trial court and the revisional court vide judgement and order dated 30.7.2005 dismissed the revision and confirmed the judgement dated 28.10.2003 passed by the learned trial court.

Feeling aggrieved by the aforesaid judgement, this petition has been preferred by the petitioner.

Heard, Sh. Prabhakar learned counsel for the petitioner, learned AGA and perused the record.

The learned counsel for the petitioner has argued that the learned court below while passing the judgement and order failed to consider that while passing not imposing any sentence of imprisonment, the very object of enactment of provision like Section 138 of Negotiable Instruments Act would stand defeated. It has also been argued that the sentence of fine/ compensaion which has been passed by the trial court and confirmation of the same by the Revisional court is mockery of law.

I do not find any force in the arguments advanced by the learned counsel for the petitioner.

The provisions of section 138 of Negotiable Instruments Act, belonging to the part of imprisonment, specifically envisages that a person who has committed the offence under Section 138 of Negotiable Instruments Act shall without prejudice to any other provision of the said Act be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.

The learned trial court while hearing on the question of sentence has specifically observed that the accused was ready to pay the amount due to the complainant, the trail court, therefore, after due consideration, sentenced respondent No. 2 with a fine of Rs. 20,000/-(twenty thousand) which is twice the amount of the cheque.

As per the complaint the amount of the two cheques was ten thousand (five thousands each). The learned revisional court has also observed it that the accused was ready to deposit the amount due against him on the Ist day, therefore the learned revisional court did not interfere in the discretion exercised by the

trial court and I do not find that either the trial court or revisional court has abused the process of court.

From the perusal of the judgement passed by both the court below, I do not find any flagrant injustice caused to the petitioner. The sentence awarded by the court below, to my mind is a discretion which has been exercised judiciously in deciding the matter. Moreover, I do not find any ground for interfence in the impugned order and judgement passed by both the learned court below.

The petition lacks merit and is liable to be dismissed.

Accordingly the petition is dismissed in limine.

(B.C. Kandpal,J)

26.10.2005
nbj